

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 123673-001

Blue Care Network of Michigan
Respondent

Issued and entered
this 10th day of January 2012
by R. Kevin Clinton
Commissioner

ORDER

I. BACKGROUND

On October 3, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.*

The Commissioner notified Blue Care Network of Michigan (BCN) of the request for external review and requested the information it used to make its final adverse determination. On October 4, 2011, BCN provided its initial response. After a preliminary review of the material submitted, the Commissioner accepted the request for external review on October 11, 2011. On October 18, 2011, BCN provided additional information.

The Petitioner is a member of BCN. Her health care benefits are defined in the *BCN 10 Certificate of Coverage* (the certificate). The issue in this external review can be decided by an analysis of the terms and conditions of the certificate. The Commissioner reviews contractual issues under MCL 500.1911(7). This matter does not require a medical opinion from an independent review organization.

On October 4 and October 25, 2010, and on July 7 and August 29, 2011, the Petitioner received laboratory services from XXXXX. XXXXX is not in BCN's network of providers. BCN denied coverage for the laboratory services on the basis that services from non-network providers are not covered without prior authorization.

The Petitioner appealed BCN's denial through its internal grievance process. At the conclusion of the grievance, BCN decided to cover the laboratory services performed during October 2010 but continued to deny coverage for the other dates. BCN then issued a final adverse determination dated September 26, 2011, reflecting that decision.

II. ISSUE

Did BCN properly deny coverage for the Petitioner's laboratory services received in July and August 2011 from an out-of-network provider?

III. ANALYSIS

Petitioner's Argument

The Petitioner argues that she had a "global referral" that entitled her to receive infertility treatment from out-of-network providers. She states she was told that a global referral does not have an expiration date as BCN alleges. She also states that she should not be responsible for the claims because her primary care physician misinformed her by telling her that she was authorized to receive the out-of-network services.

Respondent's Argument

BCN acknowledges that it authorized the Petitioner to seek out-of-network infertility treatment with XXXXX, MD, at the Colorado Center XXXXX. Dr. XXXXX referred the Petitioner to XXXXX for laboratory tests. Because the Petitioner had a valid referral to Dr. XXXXX, BCN covered some of the laboratory tests he ordered at XXXXX even though it had laboratory providers in its network that could have performed the tests.

However, the referral to Dr. XXXXX was only effective from October 4 to November 3, 2010, so BCN decided to cover only those laboratory services that were performed while the referral was effective, i.e., those in October 2010. In its final adverse determination of September 26, 2011, BCN explained:

. . . The Panel has made partial approval. The Panel has agreed to pay any unpaid infertility lab claims for the month of October 2010 according to your infertility benefit as outlined in [the] BCN 10 Certificate, section 1.09 titled "Reproductive Care and Family Planning Services." As noted in this section please be aware you are responsible for a 50% copayment of all fees associated with infertility diagnostic work-up procedures and treatment, including prescription drugs, and all facility, professional and related services. . . .

The Panel has denied retro-authorization and payment of the July and August 2011 fertility lab claims from XXXXX and any future claims as authorization number XXXXX expired on November 3, 2010. Please see . . . BCN 10 Certificate, page 18, section 2.01, titled “Unauthorized and Out-of-Plan Services.”

BCN contends that its benefits determination was in compliance with the terms of the certificate.

Commissioner’s Review

BCN is a health maintenance organization (HMO). A fundamental premise of HMOs is the centralization of health care delivery within a network of providers who sign contracts and agree to accept negotiated rates for services. Generally, HMO members must use network providers. According to the certificate (in “Part 2: Exclusions and Limitations), out-of-network services are covered only when required because of an emergency or when preauthorized by BCN. This requirement is typical of managed care contracts. In “Part 1: Your Benefits,” the certificate states:

2.01 *Unauthorized and Out-of-Plan Services*

Except for emergency care as specified in Section 1.05 of this section, health, medical and hospital services listed in this Certificate are covered **only** if they are:

- provided by a BCN-affiliated provider and
- preauthorized by BCN

Any other services will not be paid for by BCN either to the provider or to the member.

The Petitioner states her primary care physician misinformed her about the authorization to receive infertility services from an out-of-network laboratory and therefore believes that she is not responsible for the claims. However, according to the BCN preauthorization approval form, the Petitioner was only authorized to receive out-of-network infertility services from October 4 through November 3, 2010. There is no other indication in the record that out-of-network infertility services were authorized beyond November 3, 2010, and nothing in the record from which the Commissioner could conclude that the Petitioner either requested or received authorization from BCN to continue to use XXXXX. The certificate is clear that nonemergency out-of-network services that are not preauthorized are not covered.

The Commissioner finds BCN’s denial of coverage for the unauthorized out of network services in July and August 2011 is consistent with the terms and conditions of the certificate.

IV. ORDER

The Commissioner upholds Blue Care Network of Michigan's final adverse determination of September 26, 2011. BCN is not required to authorize or cover the laboratory services of July 7 and August 29, 2011.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

R. Kevin Clinton
Commissioner